

<b>Board Office Use: Legislative File Info.</b>	
File ID Number	16-1093
Introduction Date	6-8-2016
Enactment Number	16-0833
Enactment Date	6-8-16



**OAKLAND UNIFIED SCHOOL DISTRICT**  
Community Schools. Thriving Students.

# Memo

**To** Board of Education

**From** Antwan Wilson, Superintendent and Secretary, Board of Education  
By: Vernon Hal, Senior Business Officer  
Joe Dominguez, Deputy Chief, Facilities Planning and Management

**Board Meeting Date** June 8, 2016

**Subject** Independent Consultant Agreement for Professional Services - Ninyo & Moore - Fruitvale Elementary School Bathroom Renovation Project

**Action Requested** Approval by the Board of Education of an Independent Consultant Agreement for Professional Services between the District and Ninyo & Moore, Oakland, CA., for the latter to provide reviewing of concrete mix designs, perform periodic concrete batch plant inspections, perform visual inspection during the installation of post installed anchors, perform load testing of post-installed anchors (Pull & Torque testing), prepare daily reports, project management services, and preparation of a final affidavit at the completion of the project, in conjunction with the Fruitvale Elementary School Bathroom Renovation Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing June 8, 2016 and concluding no later than December 31, 2016, in an amount not-to exceed \$4,324.00.

**Discussion** DSA is requiring special inspection for this project.

**LBP** (Local Business Participation Percentage) 100.00%

**Procurement Method** Professional Services Agreement - Formal-Advertised RFP/Awarded to entity following OUSD competitive solicitation process

**Recommendation** Approval by the Board of Education of an Independent Consultant Agreement for Professional Services between the District and Ninyo & Moore, Oakland, CA., for the latter to provide reviewing of concrete mix designs, perform periodic concrete batch plant inspections, perform visual inspection during the installation of post installed anchors, perform load testing of post-installed anchors (Pull & Torque testing), prepare daily reports, project management services, and preparation of a final affidavit at the completion of the project, in conjunction with the Fruitvale Elementary School Bathroom Renovation Project, more specifically delineated in the Scope of Services in Exhibit "A", incorporated herein by reference as though fully set forth, commencing June 8, 2016 and concluding no later than December 31, 2016, in an amount not-to exceed \$4,324.00.

**Fiscal Impact** Fund 21, Measure J

## Attachments

- Independent Consultant Agreement including scope of work
- Certificate of Insurance
- Consultant Proposal



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office
With Every Consent Agenda Contract.

Legislative File ID No. 16-1093

Department: OUSD Facilities

Vendor Name: Ninyo & Moore

Project Name: Fruitvale Restroom Renovations Project No.: 13140

Contract Term: Start Date: 6-8-2016 End Date: 12-31-2016

Annual (if annual contract) or Total (if multi-year agreement) Cost: \$ 4,324.00

Approved by: Tadashi Nakadegawa

Is Vendor a local Oakland Business or have they meet the requirements of the Local Business Policy? Yes [checked] No [ ]

Why was this Vendor selected?

There was an RFQ process for special inspection services for OUSD projects. This firm was selected from that pool after submitting a proposal for this project based on their credentials and past work with the district.

Summarize the services this Vendor will be providing.

Review concrete mix designs, perform periodic concrete batch plant inspections, perform visual inspection during the installation of post installed anchors, perform load testing of post-installed anchors (Pull & Torque testing), prepare daily reports, project management services, and preparation of a final affidavit at the completion of the project.

Was this contract competitively bid? Yes [checked] No [ ]

If No, answer the following:

1) How did you determine the price is competitive?

The fee proposal is comparable to the other vendors on similar projects. Professional services contracts are not competitively bid however we followed the RFQ process. Ninyo & Moore was selected based upon qualifications and past work.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

3)  **Not Applicable - no exception - Project was competitively bid**

# INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

## Fruitvale Bathroom Renovations

This Independent Consultant Agreement for Professional Services ("Agreement") is made and entered into as of the **27th day of April, 2016** by and between the **Oakland Unified School District** ("District") and **Ninyo & Moore** ("Consultant"), (individually a "Party" or collectively the "Parties").

**WHEREAS**, The District is authorized by Section 4529.12 of the California Government Code to contract with and employ any persons for the furnishing of architecture, landscape architecture, engineering, environmental services, land surveying, and construction management through a fair, competitive selection process.

**NOW, THEREFORE**, the Parties agree as follows:

1. **Services.** The Consultant shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following:

**The scope of services is more specifically indicated on Exhibit "A."**

- 1.1. The Services shall be performed on the following project(s) / site(s) ("Project")  
**Fruitvale Elementary School Bathroom Renovations**

- Testing and Inspection Services
- Provide Project Management
- Preparation of daily field reports
- Review concrete mix designs
- Perform periodic concrete batch plant inspection
- Perform visual inspection during installation of post-installed anchors
- Perform load testing of post-installed anchors
- Compilation, review, and distribution progress report
- Prepare a final affidavit at the completion of project

- 1.2. The Consultant's Services at any one of the sites or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining Consultant's Services at other site(s). The provisions of this Agreement shall apply to the Consultant's Services at each site, without regard to the status of the remaining Project component(s). Consultant shall invoice for each inspection and test separately and for each site separately and District shall compensate Consultant for each site separately on a proportionate basis based on the level and scope of Services completed for each site.

2. **Term.** Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall commence **June 8, 2016 and concluding no later than December 31, 2016.**

3. **Submittal of Documents.** The Consultant shall not commence the Work under this Agreement until the Consultant has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u>  X  </u>	Signed Agreement
<u>  X  </u>	Workers' Compensation Certification
<u>  X  </u>	Debarment Certification

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- Debarment Certification
- Fingerprinting/Criminal Background Investigation Certification
- Insurance Certificates and Endorsements

4. **Compensation.** Consultant's fee for the performance of Consultant's Services shall be on an hourly basis and/or a per unit basis, as indicated in **Exhibit "B"** (Prices for Services). District agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed **Four thousand, three hundred twenty four dollars and no cents (\$4,324.00)** District shall pay Consultant according to the following terms and conditions:

4.1. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within thirty (30) days after the Consultant submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.

4.2. Consultant shall prepare a separate invoice for each site, if Consultant performs Services at more than one site. The itemized invoice shall reflect the hours spent by the Consultant in performing its Services pursuant to this Agreement.

5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing Services for District, except as follows:

5.1. NA

6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Consultant's Work, District being interested only in the results obtained.

7. **Local, Small Local And Small Local Resident Business Enterprise Program (L/SL/SLRBE).** Consultant shall comply with the requirements of the District's L/SL/SLRBE Program, as applicable, which may require a fifty percent (50%) mandatory minimum local participation requirement in the performance of this Agreement. A copy of the District's L/SL/SLRBE Program can be obtained on the District website, at [www.ousd.k12.ca.us](http://www.ousd.k12.ca.us), under the Facilities Planning & Management Department drop down menu, Bids and Requests for Proposals.

In light of the fifty percent (50%) L/SL/SLRBE participation requirement for formally bid professional service contracts, good faith effort documentation is not necessary.

8. **Designated Representatives / Labor Compliance Program.** Consultant shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project. This shall include, without limitation, coordination with the persons responsible for operation of the District's Labor Compliance Program. If Consultant employs subcontractor(s), Consultant shall ensure that its contract(s) with its subcontractor(s) include language notifying the subcontractor(s) of the

District's Labor Compliance Program, if any.

9. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

10. NA

**11. Performance of Services.**

- 11.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
- 11.2. **Meetings.** Consultant and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Consultant's performance of Services.
- 11.3. **District Approval.** Work completed pursuant to this Agreement must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.
- 11.4. **New Project Approval.** Consultant and District recognize that Consultant's Services may include working on various projects for District. Consultant shall obtain the approval of District prior to the commencement of a new project.

12. **Originality of Services.** Except as to standard generic details, Consultant agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Consultant and shall not be copied in whole or in part from any other source, except that submitted to Consultant by District as a basis for such services.

13. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

**14. Audit.**

- 14.1. Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall

give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars (\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.

## 15. Termination.

- 15.1. **Without Cause By District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) days after the date the notice was mailed, whichever is sooner.
- 15.2. **Without Cause By Consultant.** Consultant may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for Services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of Services to District. Consultant acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.
- 15.3. **With Cause By District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
- 15.3.1. material violation of this Agreement by the Consultant; or
  - 15.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
  - 15.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the Services from another Consultant. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

16. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), to property or persons, including personal injury and/or death, to the extent that any of the above arise out of, pertain to, or relate to the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this



Agreement, including without limitation the payment of all consequential damages.

**17. Insurance.**

17.1. The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

**17.1.1. Commercial General Liability and Automobile Liability Insurance.**

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

**17.1.2. Workers' Compensation and Employers' Liability Insurance.**

Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

**17.1.3. Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Consultant's profession.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
<b>Automobile Liability Insurance - Any Auto</b>	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
<b>Professional Liability</b>	\$ 1,000,000
<b>Workers Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

17.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

17.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

17.2.2. Language stating in particular those insured, extent of insurance, location

and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

17.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.

17.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

17.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

18. **Assignment.** The obligations and liabilities of the Consultant pursuant to this Agreement shall not be assigned voluntarily by the Consultant nor assigned by operation of law.

19. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.

20. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Consultant observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.

21. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of Services pursuant to this Agreement, including without limitation all licenses required to perform professional engineering services and geotechnical testing services.

22. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.

23. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).

24. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing of any portion of the Services.
25. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Consultant must submit, upon request by District, appropriate documentation to the District identifying the steps the Consultant has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
26. **No Rights In Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
27. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
- 27.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
  - 27.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
28. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
29. **Disputes.** In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Consultant shall neither rescind the Agreement nor stop Work.
30. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
31. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

**If to District:**  
 Oakland Unified School District

**If to Contractor:**  
 Ninyo and Moore

955 High Street  
Oakland, CA 94601  
ATTN: Tadasha Nakadegawa  
Telephone: (510) 5357038\_

1956 Webster Street, Suite 400  
Oakland, CA 94612  
Attn: **Ruchil Shah**  
(510) 633-5640

**With a copy to:**

Orbach Huff Suarez & Henderson LLP  
1901 Harrison Street, Suite 1630  
Oakland, CA 984612  
Attention: Catherine G. Boskoff  
Telephone: (510) 999-7908

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

**32.Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

**33.California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.

**34.Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**35.Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

**36.Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

**37.Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

**38.Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

**39.Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

**40. Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.

**41. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

**42. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:**

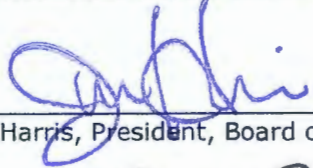
The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

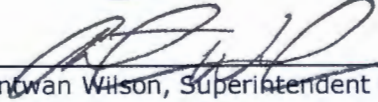
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**Susie Butler-Berkley**  
**Contract Analyst**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_  
James Harris, President, Board of Education 6-8-16  
Date


  
\_\_\_\_\_  
Antwan Wilson, Superintendent & Secretary, Board of Education 6-8-16  
Date

  
\_\_\_\_\_  
Roland Broach, Executive Director of Buildings, Custodial & Grounds  
Facilities Planning and Management Date

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
OUSD Facilities Legal Counsel 5-4-16  
Date

**CONSULTANT**

  
\_\_\_\_\_  
Title Terence K. Wang, Principal Engineer April 27, 2016  
Ninyo & Moore Date

File ID Number: 16-1093  
Introduction Date: 6-8-16  
Enactment Number: 16-0833  
Enactment Date: 6-8-16

**Information regarding Consultant:**

Consultant: Ninyo & Moore

License No.: A697063

Address: 1956 Webster Street, Suite #400  
Oakland, California 94612

Telephone: 510-343-3000

Facsimile: 510-343-3001

E-Mail: \_\_\_\_\_

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: California
- Limited Liability Company
- Other: \_\_\_\_\_

33-0269828 \_\_\_\_\_ :

Employer Identification and/or Social Security Number

**NOTE: Title 26, Code of Federal Regulations, sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.**

**WORKERS' COMPENSATION CERTIFICATION**

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Agreement.

Date: April 27, 2016

Name of Consultant or Company: Ninyo & Moore

Signature: 

Print Name and Title: Terence K. Wang, Principal Engineer

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Agreement.)



**FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION**

One of the three boxes below **must** be checked, with the corresponding certification provided, and this form attached to the Independent Consultant Agreement for Professional Services ("Agreement"):

**[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]** Consultant's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Consultant's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Consultant for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: \_\_\_\_\_  
District Representative's Name and Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Consultant's services under this Agreement and Consultant certifies its compliance with these provisions as follows: *"Consultant certifies that the Consultant has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Consultant's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Consultant, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto."*

Consultant's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

- The installation of a physical barrier at the worksite to limit contact with pupils.
- Continual supervision and monitoring of all Consultant's on-site employees of Consultant by an employee of Consultant, \_\_\_\_\_, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
- Surveillance of Employees by District personnel. **[TO BE COMPLETED BY AUTHORIZED DISTRICT EMPLOYEE ONLY.]**  
Date: \_\_\_\_\_  
District Representative's Name and Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Megan's Law (Sex Offenders)**. I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

**[MUST BE COMPLETED BY CONSULTANT'S AUTHORIZED REPRESENTATIVE.]** I am a \_\_\_\_\_

representative of the Consultant entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Consultant.

Date: April 27, 2016

Name of Consultant or Company: Ninyo & Moore

Signature: 


Print Name and Title: Terence K. Wang, PE, GE

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION**

I am aware of and hereby certify that neither Ninyo & Moore [Type name of Consultant] nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts.

Where the Consultant or any lower participant is unable to certify to this statement, it shall attach an explanation hereto.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named Consultant on the 27th day of April 2016 for the purposes of submission of this Agreement.

By:   
Signature

Terence K. Wang  
Typed or Printed Name

Principal Engineer  
Title

## **EXHIBIT "A"**

### **DESCRIPTION OF SERVICES TO BE PERFORMED BY CONSULTANT**

**Specific to this contract, Ninyo & Moore is capable and experienced in providing the needed testing and inspection service. Based on our review of the project documents we will provide the following scope of services**

- Testing and Inspection Services
- Provide Project Management
- Preparation of daily field reports
- Review concrete mix designs
- Perform periodic concrete batch plant inspection, slump test of contract and cast compressive strength test specimens (1 set / 50 cubic yards) on site.
- Perform visual inspection during installation of post-installed anchors
- Perform load testing of post-installed anchors(pull & Torque Testing)
- Prepare daily reports and test data sheets
- Compilation, review, and distribution progress report
- Prepare a final affidavit at the completion of project

Proposal to be attached.

## **Exhibit "B"**

March 22, 2016  
Proposal No.: 08SJO02-00194

Jean-Luc Keita  
SGI Construction Management  
955 High Street  
Oakland, California 94601

**EXHIBIT A**

Subject: Proposal for Materials Testing and Special Inspection Services  
OUSD Fruitvale Elementary School Restroom Renovations  
3200 Boston Avenue  
Oakland, California

Dear Jean-Luc Keita:

In accordance with your request, Ninyo & Moore is pleased to provide this proposal to provide materials testing and special inspection services for the Fruitvale elementary school restroom renovations project in Oakland, California. This proposal provides cost estimates based on our review of the project plans, specification, DSA 103 sheet and our previous experience with similar projects of this nature.

The purpose of our services will be to provide you with field and laboratory data and information in order to assess compliance with the project plans and specifications. Included in this proposal is a discussion of our understanding of the project, the scope of services we can provide, and the associated fees.

**PROJECT UNDERSTANDING AND PROPOSED CONSTRUCTION**

The Fruitvale elementary school renovations project will include installation of new plumbing fixtures and piping for boy's restroom #2 and girl's restroom #3 in main building.

**SCOPE OF SERVICES**

Specific to this contract, Ninyo & Moore is capable and experienced in providing the needed testing and inspection services. Based on our review of the project documents we will provide the following scope of services.

- Provide project management to include client liaison, work scheduling, quality review, and semi-monthly distribution of test data and daily field inspection reports.
- Preparation of daily field reports documenting items inspected.
- Prepare progress reports every two weeks including daily reports and test data sheets.
- Review concrete mix designs submitted by the contractor for compliance with the project documents.
- Perform periodic concrete batch plant inspection, slump test of concrete and cast compressive strength test specimens (1 set / 50 cubic yards) on site.
- Perform visual inspection during the installation of post-installed anchors.
- Perform load testing of post-installed anchors (Pull & Torque Testing).
- Prepare daily reports and test data sheets.
- Compilation, review, and distribution progress report including field and laboratory test data.
- Prepare a Final Affidavit at the completion of project.

#### **BASIS OF PROPOSAL AND ASSUMPTIONS**

- Our services will be scheduled and coordinated by the project's superintendent.
- The contractor and subcontractors will maintain a 40-hour work week during normal daytime work hours. Weekend and overtime work has not been anticipated and has not been included in this proposal.
- Our services are subject to California prevailing wage law.
- Site visits made by technicians and special inspectors will be billed on a on a portal-to-portal basis with 2-hour on-site minimum and 4-hour increments.
- Rebar sampling and tagging, and structural steel welding inspections will not be required. In addition, laboratory tensile and bend test for reinforcing steel will not be required on this project.
- Geotechnical observation and testing, masonry placement inspection and testing, glulam beam inspection, shoring and waterproofing observation and testing services to be provided by others or not part of this project and are not included in the cost estimate.
- Services that are not included will be provided upon the client's written request.
- Additional laboratory testing will be provided upon request and written approval, and will be billed at the rates listed on our current fee schedule.

**PROPOSED ESTIMATED COST**

<b>Task No.</b>	<b>Summary of Estimated Fees for Materials Testing &amp; Inspection Services</b>	<b>Estimated Fees</b>
1	On-site Special Inspection & Testing	\$3,071
2	Laboratory Testing	\$240
3	Project Management	\$1,012
	<b>Total Estimated Fee</b>	<b>\$4,324</b>

Our proposed time-and-materials fee estimate for the scope of services described is **\$4,324 (Four Thousand Three Hundred and Twenty Four Dollars)**. Detailed estimate of fees are attached under Table 1. Please note that a finalized construction schedule was not available at the time of our cost estimate. Should the construction schedule require a lesser or greater amount of services than that estimated herein, the cost will vary accordingly. The actual cost of our services will depend largely on the requested site visits for our services, as well as impact of weather and work stoppages, all of which are beyond our control. When possible, we will combine inspection and testing services to reduce the cost of our services.

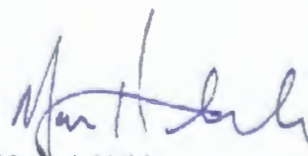
We will provide services on an as-needed basis and will require 24 hours notice for scheduling inspection and testing visits.

We sincerely appreciate the opportunity to provide a proposal for our materials testing, and special inspection services, and very much look forward to the opportunity to continue to work with you on this project.

Sincerely,  
**NINYO & MOORE**



Ruchil R. Shah  
Project Manager



Mark J. Hahle  
Director of Construction Services

RS/MJH/slm

Attachments: Table 1 – Breakdown of Estimated Fees  
Schedule of Fees

Distribution: (1) Addressee

Client#: 704

NINYOMOORI

ACORD<sup>TM</sup>

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/26/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 510 465-3090 Mandy Guo	CONTACT NAME: Doris A. Chambers	
	PHONE (A/C, No, Ext): 510 465-3090 FAX (A/C, No): 510 452-2193 E-MAIL ADDRESS: dchambers@dealeyrenton.com	
INSURED Ninyo & Moore Geotechnical & Environmental Sciences Consultants 1956 Webster Street, Suite 400 Oakland, CA 94612	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Travelers Property Casualty Co	25674
	INSURER B: American Automobile Ins. Co.	21849
	INSURER C: Evanston Insurance Company	35378
	INSURER D:	
	INSURER E:	
INSURER F:		

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual <input checked="" type="checkbox"/> OCP GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X	X	6308986R247	10/03/2015	10/03/2016	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	X	X	8108986R247	10/03/2015	10/03/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB EXCESS LIAB DED RETENTION \$	X	X	CUP8986R247	10/03/2015	10/03/2016	EACH OCCURRENCE \$9,000,000 AGGREGATE \$9,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below			WZP81032192	05/01/2016	05/01/2017	<input checked="" type="checkbox"/> WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liab & Contractor's Pollution Liab.			MAX7PL0001977	10/03/2015	04/03/2017	\$5,000,000 per Claim \$5,000,000 Annl Aggr.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

GENERAL LIABILITY POLICY EXCLUDES CLAIMS ARISING OUT OF THE PERFORMANCE OF PROFESSIONAL SERVICES.

REF: Fruitvale Elementary School Restroom Renovation

OUSD and SGI Construction Management are named as Additional Insured as respects General Liability coverage.

## CERTIFICATE HOLDER

## CANCELLATION

OUSD  
Attn: Jean-Luc Keita  
955 High Street  
Oakland, CA 94601

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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## INDEPENDENT CONSULTANT FOR PROFESSIONAL SERVICES ROUTING FORM

### Project Information

<b>Project Name</b>	Fruitvale Bathroom Renovation	<b>Site</b>	117
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### Basic Directions

**Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.**

<b>Attachment Checklist</b>	<input type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
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### Contractor Information

<b>Contractor Name</b>	Ninyo & Moore	<b>Agency's Contact</b>	Ruchil Shah
<b>OUSD Vendor ID #</b>	V058012	<b>Title</b>	Project Manager
<b>Street Address</b>	1956 Webster Street, Suite 400	<b>City</b>	Oakland
<b>Telephone</b>	510-633-5640	<b>State</b>	CA
<b>Policy Expires</b>		<b>Zip</b>	94612
<b>Contractor History</b>	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Worked as an OUSD employee?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>OUSD Project #</b>	13140		

### Term

<b>Date Work Will Begin</b>	5-25-2016	<b>Date Work Will End By</b> <small>(not more than 5 years from start date)</small>	12-31-2016
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### Compensation

<b>Total Contract Amount</b>	\$	<b>Total Contract Not To Exceed</b>	\$4,324.00
<b>Pay Rate Per Hour (If Hourly)</b>	\$	<b>If Amendment, Changed Amount</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

### Budget Information

*If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.*

Resource #	Funding Source	Org Key	Object Code	Amount
9350	Fund 21, Measure J	1179905891	6252	\$4,324.00

### Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
1.	<b>Director, Facilities Planning and Management</b>				
	Signature	Date Approved	5/9/16		
2.	<b>General Counsel, Department of Facilities Planning and Management</b>				
	Signature	Date Approved	5-4-16		
3.	<b>Interim Deputy Chief, Facilities Planning and Management</b>				
	Signature	Date Approved			
4.	<b>Senior Business Officer</b>				
	Signature	Date Approved			
5.	<b>President, Board of Education</b>				
	Signature	Date Approved			